

Policy for Commercial Activities  
on State Owned and Managed Lands and Waters  
Department of Land and Natural Resources

*RECOMMENDATIONS APPROVED ON 1/30/98:*

1) The Board accepted the final report of *Findings and Recommendations* from the Department's Commercial Use Task Force, and acknowledged the fine work of the Task Force in establishing the basis for the Department's commercial use policies.

2) The Board adopted the following commercial activity policies and directed the Department to develop appropriate standards and processing mechanisms to implement these policies as needed with the following caveats:

- This should be done in a timely but transparent manner to assure that all affected constituencies are aware and participate where appropriate;
- It should not unreasonably affect outstanding permits, licenses, and existing memoranda of understanding;
- The diversity of resources managed by the Department will require different implementation approaches;
- The current funding constraints will delay some actions needed for full implementation of these policies; and
- All relevant commercial activity proposals brought forward for Board approval will have considered these commercial activity policies.

POLICY # 1:

The Department, when considering commercial activity proposals or management actions on state owned lands and waters, will use the following hierarchy of priorities:

- a. The Natural or Cultural Resource - The highest priority should go to the conservation of the resource. Only if an activity can be done in a way that does not **unduly damage** the resource, should it be allowed.
- b. The General Public - If use or activity by the public can be done without undue damage to the resource, it should be the next priority.
- c. Commercial Activities - Commercial activities should be considered only if their impacts do not impinge on the resource, #a above, or use by the general public, #b, above.

If public and commercial activities are occurring, and resource impacts indicate that restrictions or controls need to be imposed, these should first be levied on commercial operators. The general public is the last group to have restrictions and controls imposed on them.

POLICY # 2:

The principles of *Limits of Acceptable Change* should be used to monitor and manage intensities of use.

POLICY #3:

Any new permits for commercial activity should have explicit conditions to allow DLNR ability to change levels or terminate certain activities based upon stated limits of acceptable change. This will insure that managing agencies have timely opportunities to remedy any problems that occur as a result of that permit.

POLICY #4:

The ***Managing Agency*** has the lead responsibility to coordinate an applicant's activity application. The Managing Agency is responsible to inform other appropriate agencies and solicit comments much in the way present CDUA applications are handled by the Lands Division. Any environmental documentation (e.g. environmental impact statements and/or assessments) needed to process any commercial activity will be the responsibility of the applicant.

POLICY #5:

The ***Managing Agency*** can issue activity permits for routine activities and not for profit organizations without Board approval. Memoranda of understanding can be established for not for profit organizations to cover a range of activities. Very significant activities and/or those requesting multiple years should go to the Board for approval.

POLICY #6:

Reasonable fees for commercial users should be assessed based either on a percentage of gross revenues, per user, or expected impacts of their activity. While any group conducting an activity should be encouraged to also perform work that improves the resource, or mitigates their presence, there should be no guaranteed waiver of all fees for service of this kind. Not for profit groups that charge fees only to cover administrative costs can be exempted from fees.

**POLICY #7:**

The Department will compile a list of eligible sites for commercial activity. The list will also note the intensity of commercial activity that will be permitted. The list will be periodically reviewed and updated.

**Definitions:**

**Activity** - A pursuit that does not involve the changing or alteration of land or water areas, or existing structures on those land or water areas. In general, activities are those things that take place on the resources in a passive way, do not involve any resource extraction, or do not require the imposition of change on the resource.

**Commercial Activity** - The collection by a party or their agent of any fee, charge, or other compensation shall make the activity commercial except when such fee, charge, or other compensation is for the sale of literature allowed under Chapter 13-7-7, HAR. Nonprofit status of any group or organization under Internal Revenue or Postal Laws or regulations does not in itself determine whether an event or activity arranged or managed by such a group or organization is noncommercial. Not for profit groups that charge only a nominal fee for administrative costs that utilize a public facility or resource at a frequency and/or magnitude that does not significantly contribute to the degradation of the facility and/or resource will be considered non-commercial.

**Ecotourism** - Travel to Hawaii's natural, cultural and historic attractions to experience and study Hawaii's unique environment, heritage and culture in a manner which is ecologically responsible and sustainable, and sustains the wellbeing of local communities.

**Limits of Acceptable Change** - A concept of assessing impacts to the resource. Under this concept, descriptors are established indicating what level of change or impact is tolerable, or what level it takes to trigger some kind of remedial action. If a resource is unduly impacted, restrictions are imposed, regardless of the number of users.

**Managing Agency** - The Managing Agency is that lead Division or office that has jurisdictional responsibility for the area being considered for an activity. If a proposed activity takes place on more than one jurisdiction, the division or office having the greatest area of resource will be considered as the Managing Agency.

**Undue Damage or Impact** - Includes excessive damage, or those impacts which cannot be economically remedied, given a managing agency's resources.

**Use** - If a proposed action will involve a change or construction, this is considered a use.